

May 27 , 2009

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**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Appeal of USAC Decision On Appeal Of Notification Of Commitment Adjustment  
CC Docket No. 02-6**

<b>Applicant Name:</b>	St. Dominic School
<b>Billed Entity Number:</b>	10615
<b>Funding Year</b>	2004
<b>Form 471 App. Number:</b>	410150
<b>Funding Request Number:</b>	1124696

Dear Ms. Dortch:

St. Dominic School ("St. Dominic"), acting through counsel and pursuant to Sections 54.719-54.721 of the Commission's rules<sup>1</sup>, hereby timely files this Request for Review ("Appeal"), which requests Commission review of the adverse decision of the Administrator of the Universal Service Administrative Company ("USAC") denying the funding request enumerated above for Funding Year 2004 and seeking recovery of previously disbursed E-rate support funds. *See* Exhibit 1 attached hereto.

More specifically, on April 28, 2009, USAC's Schools and Libraries Division ("SLD") issued a decision denying an appeal filed by St. Dominic with USAC. In its decision USAC held that St. Dominic was responsible for an E-rate program rule violation relating to the Commission's competitive bidding rules. The USAC appeal denial reiterated a previous USAC decision requiring the applicant to return previously disbursed funds made available pursuant to the referenced Funding Request Number.

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<sup>1</sup> 47 C.F.R. §§ 54.719-54.721

St. Dominic is aggrieved by USAC's April 28, 2009 decision and submits that for various reasons outlined in its appeal to USAC and others that it will submit to the Commission, the latest USAC decision is unwarranted and unjustified under the rules, policies and requirements governing the E-rate Program applicable to the referenced Application and Funding Request Number.

St. Dominic is filing this Appeal well prior to the 60-day appeal period prescribed by the Commission's rules because on the very same day that USAC released Exhibit 1 it also issued a Demand Payment Letter requiring St. Dominic to pay the amount sought to be recovered, with such payment due in 30 days (i.e., by May 28, 2009). On May 18, 2009 USAC Staff informed the undersigned counsel that the only way to forestall the further implementation of USAC's collection process was to file this appeal, even though there remained significant time before the end of the 60-day appeal deadline.

St. Dominic will supplement this Appeal with a full discussion of the facts, St. Dominic's position and supporting arguments.

Sincerely,

A handwritten signature in black ink, reading "Paul C. Besozzi". The signature is stylized with a large, looping "P" and a long horizontal line extending to the right.

Paul C. Besozzi  
Counsel to the Archdiocese of New York and St. Dominic School

cc: James P. McCabe, Esq.

# EXHIBIT 1



**Universal Service Administrative Company**  
Schools & Libraries Division

### **Administrator's Decision on Appeal – Funding Year 2004-2005**

April 28, 2009

Cynthia Schultz  
Patton Boggs LLP  
2550 M Street, NW  
Suite 550  
Washington, DC 20037

Re: Applicant Name: ST DOMINIC SCHOOL  
Billed Entity Number: 10615  
Form 471 Application Number: 410150  
Funding Request Number(s): 1124696  
Your Correspondence Dated: November 29, 2008

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2004 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1124696  
Decision on Appeal: **Denied**  
Explanation:

- Upon thorough review of the appeal letters and the relevant documentation, USAC has determined the following, based on the information provided on appeal:

1. There is no dispute that Jiin Artis filled out and submitted the Form 470 # 377220000487934. This in and of itself is a violation of the Commission's competitive bid rules and requirements. A representative of Kwah, Inc. filled out and submitted the FCC Form 470, which constitutes a violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders. Kwah, Inc. assisted in

completing the FCC Form 470 even though St. Dominic School was the entity that would negotiate with prospective bidders.

2. The appellant states that "USAC is without authority to treat internally developed procedural guidelines as binding regulations for which noncompliance justifies the recoupment years later of E-rate funding previously expended..." First, prior to Funding Year 2004, USAC has made it clear that a service provider filling out and submitting an FCC Form 470 on which the provider intended to bid was unallowable. Second, USAC is required to recover funds where program rule violations have been determined to have occurred, within the administrative five year period as stated by the Commission.

3. Regarding Jiin Artis' assertion that the school determined the services to be sought on the FCC Form 470, the appellant must understand that USAC routinely tests applicant and service provider statements and certifications in order to protect program integrity. Information in USAC files indicates that Artis did develop content for multiple FCC Forms 470, albeit these instances relate to a prior funding year. Artis' statement that she received the text from someone at St. Dominic School would be supportable if any kind of specific information regarding the purported direction from the school were provided. For example, the name of the person who gave Artis this direction; the date when Artis received this direction; in what form was this direction provided, e.g. fax or email? The statement would be further supportable if documentation from St. Dominic's School to Artis listing what they wished to include on their FCC Form 470 were provided. However, no such supporting information or documentation was provided by Artis, nor did St. Dominic School respond to USAC's request for an explanation.

For the reasons state above, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

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Visit us online at: [www.usac.org/sl/](http://www.usac.org/sl/)

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